



# County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA  
Chief Executive Officer

April 25, 2013

To: Supervisor Mark Ridley-Thomas, Chairman  
Supervisor Gloria Molina  
Supervisor Zev Yaroslavsky  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

Board of Supervisors  
GLORIA MOLINA  
First District

MARK RIDLEY-THOMAS  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

## SACRAMENTO UPDATE

### Executive Summary

This memorandum provides information on the following:

- **Pursuit of County Position on Legislation**
  - **Pursuit of County Position to Support AB 436 (Jones-Sawyer).** This measure would apply the doctrine of comparative fault to litigation between a plaintiff property owner and a defendant governmental agency in inverse condemnation actions. The measure also would require if the plaintiff fails to meet the normal tort standard in the Code of Civil Procedure, they will not be able to receive their own costs as currently allowed for inverse condemnation cases. Therefore, unless otherwise directed by the Board, consistent with existing policies to support proposals to mitigate the effects of liability upon public entities by applying the doctrine of comparative fault to inverse condemnation actions, **the Sacramento advocates will support AB 436.**
  - **Pursuit of County Position to Support SB 715 (Lara).** This measure would classify a waste-to-energy facility in the County of Los Angeles as renewable energy resources if it was operational prior to September 26, 1996 and if, on or after January 1, 2045, the facility has converted into a system that does not perform traditional direct combustion of municipal solid waste, and the facility

*"To Enrich Lives Through Effective And Caring Service"*

*Please Conserve Paper – This Document and Copies are Two-Sided  
Intra-County Correspondence Sent Electronically Only*

diverts an amount of waste from landfills that equals or exceeds its capability as it existed prior to the conversion of the facility. Therefore, unless otherwise directed by the Board, consistent with existing policy to support legislation which promotes the development of alternatives to landfills such as conversion technologies that protect public health and safety and the environment, and provides that all energy produced by conversion technology facilities be designated as renewable energy, the **Sacramento advocates will support SB 715.**

- **Status of County-Sponsored Legislation**

- **County-sponsored SB 804 (Lara)** - related to adjusting the definition of "biomass conversion" to include conversion technologies was amended on April 22, 2013.

- **Status of County-Advocacy Legislation**

- **County-supported AB 459 (Mitchell)** - related to healthy food and beverage options for sale in vending machines, concessions, and cafeterias located in State buildings, passed the Assembly Business, Professions and Consumer Protection Committee on April 23, 2013.

---

### **Pursuit of County Position on Legislation**

**AB 436 (Jones-Sawyer)**, which as introduced on February 15, 2013, would apply the doctrine of comparative fault to inverse condemnation actions and would require a court or arbitrator to reduce the compensation paid to a plaintiff in an inverse condemnation proceeding in direct proportion to his or her percentage of fault, if any, in the damaging of property that constitutes a taking. The bill would also provide that if the defendant in an inverse condemnation action, on or after January 1, 2014, makes an offer that the plaintiff does not accept, and the plaintiff fails to obtain a judgment or award, the plaintiff: 1) shall not recover his or her post-offer costs; 2) shall pay the defendant's post-offer costs; and 3) may be required to pay the defendant's costs for expert witnesses. The bill would also provide that if the plaintiff rejects the offer and fails to obtain a more favorable judgment or award, he or she would be prohibited from recovering his or her post-offer costs, but would not be ordered to pay the defendant's post-offer costs.

Existing law prohibits the taking of private property without the payment of just compensation and permits a person to maintain an action in inverse condemnation for

the purpose of obtaining compensation for a taking. The law applies the doctrine of comparative fault for the purpose of apportioning responsibility and reducing damages to the extent a plaintiff is found partially at fault. Current law also awards to the plaintiff in an inverse condemnation proceeding reasonable costs actually incurred because of that proceeding in the trial court, or any appellate proceeding, in which the plaintiff prevails on any issue in that proceeding.

AB 436 would expressly make applicable the doctrine of comparative fault to litigation between a plaintiff property owner and a defendant governmental agency in inverse condemnation actions. The bill would also expressly ensure that Code of Civil Procedure Section 998 applies to governmental agencies in inverse actions consistent with the purpose of the statute by prohibiting a plaintiff from receiving his/her own costs if it fails to meet the normal tort standard.

AB 436 is a reintroduction of **County-supported AB 328 (Smyth) of 2012**, which died in the Senate Judiciary Committee.

According to County Counsel, California appellate courts have applied what is tantamount to a strict liability standard with no apportionment for fault in non-flooding inverse condemnation actions. The appellate courts have carved out a different standard for certain flooding cases which requires the trial court to consider a long list of factors, including the plaintiff's actions or omissions to act that proximately caused or contributed to the harm. The prevailing plaintiff in a non-flooding inverse condemnation action could potentially recover all of his/her damages from the defendant agency despite having contributed to his/her own damages.

In addition, under Code of Civil Procedure Section 998, a defendant may make a written offer to settle. If the plaintiff rejects the offer and fails to obtain a more favorable judgment, Section 998 prevents the plaintiff from recovering post-offer costs, requires him/her to pay the defendant's post-offer costs, and at the discretion of the Court, may be required to pay the defendant's post-offer expert witness costs. California appellate courts have held that Section 998 only applies to an inverse condemnation action when the plaintiff rejects the defendant's written offer and the trial results in a defense verdict.

The Department of Public Works (DPW) and County Counsel indicate that AB 436 would be beneficial to the County and its Special Districts because it would result in savings of litigation costs and attorneys' fees by reducing public agency liability for damages proximately caused by plaintiffs in proportion to their percentage of fault. Under AB 436, property owners would no longer be able to seek 100 percent reimbursement for property damage to which they contributed. DPW states this would significantly reduce litigation costs to the sewer maintenance districts, the flood control

district, and property management operations because the Department would be able to negotiate more favorable settlement terms inasmuch as the claimant's percentage of fault would reduce the amount potentially recoverable.

The Department of Public Works, County Counsel and this office support AB 436. Therefore, unless otherwise directed by the Board, consistent with existing policy to support proposals to mitigate the effects of liability upon public entities by applying the doctrine of comparative fault to inverse condemnation actions and the Board's previous support of AB 328 in 2012, **the Sacramento advocates will support AB 436.**

AB 436 is sponsored by the Los Angeles City Attorney's Office and is supported by the California Association of Sanitation Agencies and the League of California Cities. There is no registered opposition on file.

AB 436 is scheduled for hearing in the Assembly Judiciary Committee on April 30, 2013.

**SB 715 (Lara)**, which as amended on April 8, 2013, would classify a facility that is engaged in combustion of municipal solid waste as an eligible renewable energy if: 1) it is located in the County of Los Angeles and was operational prior to September 26, 1996; and 2) the facility, on or after January 1, 2045, has converted into a system that does not perform traditional direct combustion of municipal solid waste, and the facility diverts an amount of waste from landfills that equals or exceeds its capacity as it existed prior to conversion of the facility.

Existing law establishes the California Renewables Portfolio Standard Program, which requires the Public Utilities Commission to implement annual procurement targets for the procurement of eligible renewable energy resources, as defined, for all retail sellers, as defined, to achieve the targets and goals of the program. The law also provides that a facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable energy resource, unless it is located in the County of Stanislaus and was operational prior to September 26, 1996.

SB 715 would rectify this location-based classification and bring parity to the State's existing waste-to-energy facilities.

According to the author's office, current law provides different classifications for the three existing waste-to-energy facilities in the State based upon geographic location. While all three facilities produce green baseload energy from waste in the same technologically and environmentally sound manner, the facility in Stanislaus County is considered renewable, whereas the two facilities located in the County of Los Angeles are not.

The Department of Public Works reports that two facilities in the County would be made eligible Renewable Portfolio Standards facilities if SB 715 is enacted. One facility is the Commerce Refuse-to-Energy Facility which is located in the City of Commerce and is operated by the County Sanitation Districts of Los Angeles County. This facility has been in operation since 1987 and converts 350 tons of residential and commercial refuse into energy per day. The other facility is the Southeast Resources Recovery Facility (SERRF) which is located in the City of Long Beach. SERRF has been in operation since 1988 and serves numerous cities, including the City of Long Beach, and the Los Angeles County Sanitation Districts. SERRF processes up to 1,380 tons of municipal solid waste per day.

The Department of Public Works indicates that jurisdictions that send municipal solid waste to these County-located facilities receive diversion credit as allowed according to the Integrated Waste Management Act of 1989. However, under current law, utilities which purchase power from these facilities do not receive renewable portfolio credit for these purchases. SB 715 would ensure parity by making the two waste-to-energy facilities currently located in the County of Los Angeles eligible as Renewable Portfolio Standards facilities.

This office and the Department of Public Works support SB 715. Therefore, unless otherwise directed by the Board, consistent with existing policy to support legislation which promotes the development of alternatives to landfills such as conversion technologies that protect public health and safety and the environment, and provides that all energy produced by conversion technology facilities be designated as renewable energy, the **Sacramento advocates will support SB 715.**

SB 751 is sponsored by the City of Long Beach. Currently, there is no registered opposition for the bill.

SB 751 is scheduled for hearing in the Senate Energy, Utilities, and Communications Committee on April 30, 2013.

### **Status of County-Sponsored Legislation**

**County-sponsored SB 804 (Lara)**, which as introduced on February 22, 2013, stated the intent of the Legislature to examine the development of solid waste conversion technology facilities to manage residual solid waste that cannot feasibly be recycled or composted, was amended on April 22, 2013. As amended, SB 804 would now: 1) revise the definition of the term "biomass conversion" to include, in addition to controlled combustion, other conversion technology; and 2) define "composting" to

Each Supervisor  
April 25, 2013  
Page 6

include aerobic and anaerobic decomposition of organic wastes for purposes of implementing certain solid waste management practices and reduction goals.

The Department of Public Works indicates that SB 804, as amended, would broaden and clarify the definition of biomass conversion to allow for cleaner, non-combustion conversion technologies to also be permitted under the definition. Currently, the definition is limited to only facilities that combust biomass. Additionally, the bill would broaden the definition of composting to include both aerobic and anaerobic decomposition for the purpose of implementing certain solid waste management practices and reduction goals.

The Sacramento advocates will continue discussions with State agencies and other key stakeholders regarding the provisions of SB 804, with the goal of building support to broaden and clarify definitions and incentives for conversion technologies.

SB 804 is scheduled for hearing in the Senate Environmental Quality Committee on May 1, 2013.

#### **Status of County-Advocacy Legislation**

**County-supported AB 459 (Mitchell)**, which was introduced on February 19, 2013, would revise the current nutritional guidelines for food and beverages sold in vending machines, concessions, and cafeterias on State property, was amended on April 18, 2013. As amended, the bill adds language to: 1) encourage operators that maintain a vending machine on State-owned or State-leased property to sell food or beverage items grown, packaged, or produced within the State of California, 2) sell food or beverage items that meet Federal sustainability guidelines; and 3) require the State Department of General Services, in consultation with the California Environmental Protection Agency and other related/affected stakeholders, to assist in developing practices to promote the acquisition of healthy, sustainable, and environmentally preferable purchasing of food and beverages. AB 459 passed the Assembly Business, Professions and Consumer Protection Committee by a vote of 9 to 3 on April 23, 2013. This measure now proceeds to the Assembly Appropriations Committee.

We will continue to keep you advised.

WTF:RA  
MR:AO:RM:ma

c: All Department Heads  
Legislative Strategist